

UNDER SECRETARY OF THE TREASURY
WASHINGTON

Administrative Circular No. 159

June 1, 1967

To Heads of Bureaus

Treasury Department,

SUBJECT: Freedom of Information Act (P.L. 89-487).

Last year the Congress passed and the President approved the Freedom of Information Act (P.L. 89-487) which becomes effective July 4, 1967, and which is being codified as 5 U.S.C. 552. The delay of one year in the effective date was to enable the departments and agencies to make the necessary preparations for the implementation of the Act. The Attorney General has prepared a memorandum advising on the development and implementation of this law which is now being issued in final form. Treasury's General Counsel and legal representatives in the bureaus have had the opportunity to comment on the contents of the memorandum in draft form.

This Circular covers some common problems and outlines basic approaches to the issuance of individual bureau regulations.

Background

1. The Act (P.L. 89-487) which amended the Administrative Procedure Act of 1946, requires greater disclosure of Government records and better access by the public to them.

2. It specifies that certain classes of records must be made available to the public with copying service provided:

- (a) Final opinions and orders made in the adjudication of cases [Sec. 3(b)(A)].
- (b) Statements of policy and interpretations not published in the Federal Register [Sec. 3(b)(B)].
- (c) Administrative staff manuals and instructions to staff that affect any member of the public [Sec. 3(b)(C)].

(d) Other identifiable records [Sec. 3(c)].

3. It excludes certain records that consist of:

- (a) Matters required by Executive Order to be kept secret in the interest of national defense or foreign policy.
- (b) Matters related solely to internal personnel rules and practices of any agency.
- (c) Matters that are specifically exempt by statute.
- (d) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.
- (e) Inter-agency or intra-agency memoranda or letters which would not be available to a private party in litigation.
- (f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (g) Investigatory files compiled for law enforcement purposes, except to the extent available by law to a private party.
- (h) Or relate to examination, operating, or condition reports prepared by, on behalf of, or for use of any agency in the regulation or supervision of financial institutions.
- (i) Geological and geophysical data (and maps) concerning wells.

4. Nothing in the Act shall be authority to withhold information from Congress.

5. A person without actual notice does not have to resort to, nor can he be adversely affected by, any regulation or rule or other specified issuances that are not published, or not made available to the public. If the applicant for an identifiable record is denied such a record, he may seek immediate redress by suit for an order in a U. S. District Court enjoining the agency from withholding the record.

Implementation

Each bureau which now has regulations published in the Code of Federal Regulations on the disclosure of records and information must promulgate new regulations conforming with the Act by July 4, 1967. The advisory memorandum to be issued by the Attorney General shall be used in developing the individual bureau's regulations.

The Office of General Counsel will prepare appropriate regulations for the Office of the Secretary and other bureaus and offices which do not have separate regulations on disclosure of records.

Guidelines in Developing Regulations

1. Officials to determine disclosure

The bureau regulations must state where records can be inspected and who is responsible for the decision for disclosure, and the determination of which records are exempt from disclosure. The responsibility of field officials should be clearly defined.

2. Appeals

The regulations should specify the appeal available and who will make final decision before the applicant for the record seeks judicial review. Normally, the final appeal should be to the bureau head. The bureau head shall, where either he or the supervisory official in the Office of the Secretary deems it appropriate, refer a denial of disclosure to the supervisory official. The Secretary's Office should not be designated as the appellate body for the release of a Treasury bureau's records.

3. Public reading rooms

To provide records to the public, inspection and copying of materials should be made available where feasible. In Washington, the Library, located in Main Treasury will provide this service for all bureaus except Internal Revenue Service and Customs, for materials under Section 3(a) and 3(b) of the Act. For materials under Section 3(c) the Library will serve only as a Treasury-wide referral service giving advice as to the proper bureau location. The bureau's regulations should be drafted with this division of responsibility in mind. The individual bureau regulations also should include data on location of reading rooms in the field where they are provided. Bureaus should consult with one another on areas where joint or mutual rooms could be maintained.

4. Copying Facilities

Each reading room must have copying facilities available which will give prompt service to requests for copies of requested records. Bureaus should consider establishing shared facilities that will give economical, yet reasonably prompt and efficient service to the public.

5. User Charges

The Act requires that user charges be established charging the public for the cost of the services provided. In regard to Sec. 3(b) records, charges should only be made to recover the direct, actual costs of duplicating, reproducing, certifying or authenticating copies of such records. But as to Section 3(c) records, in addition to the charge for such costs, a charge should be made to recover the full cost to the bureau of searching for the identifiable records, as well as other indirect costs.

The fees for services in connection with the Freedom of Information Act should be determined pursuant to 5 U.S.C. 140 (1964 Ed.) Budget Bureau A-25, and supplements, and Treasury Administrative Circular 67 (revised) and supplements.

The Freedom of Information Act and interpretation by the Attorney General's Office require that the copying and searching fees must be published in the regulations issued to implement the Act.

The funds received from the public for the sale of publications or reproductions or from the performances of other services under the Act shall be deposited in receipt account, "2419, Fees and Other Charges for Other Administrative Services", unless the bureau has specific legislative authority to use the receipts to reimburse their appropriations or revolving funds.

Provisions must be made, although it is not required to be spelled out in the regulations, for a system of job orders to record requests, identify receipts, and handle these Government funds in a way that meets the requirements of the General Accounting Office, Treasury's requirements, and internal audit procedures of your agency.

6. Additional disclosure

Bureaus may wish to consider including in their regulations two additional provisions on disclosure which have been incorporated

in some prior disclosure regulations. The first is the procedure to be followed upon the receipt by an official of a subpoena or subpoena duces tecum. Previous regulations have required the receiving official to await instructions before testifying or producing records in court. This requirement would still be appropriate, except with respect to the production of records which the receiving official already has authority under the Freedom of Information Act and regulations to provide to the public. The second provision is a prohibition on the removal of records and on providing records or information from records, except in conformity with the Act and regulations.

7. Indexing and deleting details

Bureaus will need to arrange internal procedures for indexing and deleting appropriate details from records listed in Section 3(b).

Responsibility for this action must be fixed either in the originating office or a central office. The public reading rooms in Washington will not be responsible for these functions.

8. Publication in Federal Register

In addition to the making available of records under regulations, the Act requires in subsection 3(a) the publication in the Federal Register of five categories of material. Category (A) includes statements of central and field organization, the places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, and Category (B) includes the general course and method by which functions are channeled and determined, including the availability of formal and informal procedures. Much of this material may have been published recently. You should review the material of this character which has been published to ensure that all required data has been or will be published. If republication is required, the data should be consistent with the regulations issued pursuant to this Act. These statements may be published as notices.

The General Counsel's Office will prepare the materials for the Office of the Secretary, Bureau of Engraving and Printing, and the Savings Bonds Division.

9. Identification of Records

Each bureau or office should identify in as concrete terms as possible the types of records which come within the categories

mentioned in the Act. For example, each bureau should identify which administrative actions come within the scope of "orders made in the adjudication of cases", and are of precedential value, what are policy statements and interpretations which need to be made available, and which staff manuals affect the public. A continuing procedure should be instituted for determining the records which must be made available.

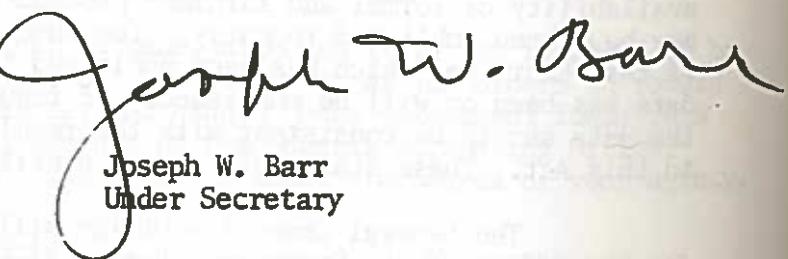
10. Record of Implementation

The Justice Department has suggested that each agency maintain a comprehensive history of agency actions to implement the new law - not only to provide proof of compliance, but be able to respond to inquiries from the Congress and the public generally on the administration of the Act.

11. Preclearance of Bureau Regulations

In order to maintain maximum uniformity within the Treasury Department with respect to procedural and substantive actions under the Act, the bureau regulations should be submitted to the General Counsel's Office of Treasury for review prior to publication in the Federal Register.

Assistance in developing your regulations and interpretations is available from the bureau's legal counsel and the General Counsel's Office and the Assistant Secretary for Administration.


Joseph W. Barr
Under Secretary